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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,328	12/19/2003	Robert Neumann	NEU-108	4494
7590 03/10/2006				
Ray K. Shahani, Esq. ATTORNEY AT LAW Twin Oaks Office Plaza 477 Ninth Avenue, Suite 112 San Mateo, CA 94402-1854			EXAMINER GELLNER, JEFFREY L	
			ART UNIT 3643	PAPER NUMBER

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/741,328	Applicant(s) NEUMANN, ROBERT	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 24 August 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Here, no copies of the non-patent literature were supplied.

Election/Restrictions

Newly added claims 16-21 are withdrawn because they are drawn to non-elected species.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, and 10-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stroll (Natural crop protection in the Tropics) in view Talbot et al. (US 5,139,561).

As to claims 1 and 15, Stroll discloses a method for protecting crop plants from destruction by crop and agricultural insects (first two paragraphs of "Methods of Use" section on

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page 2 of the printout) comprising the step of contacting the plant with an aqueous formulation containing only water and capsicum ((first 2 paragraphs of “Methods of Use” section on page 2 of the printout). Not disclosed is applying the composition to crop seeds or grains prior to planting the crop. Talbot et al., however, teaches that a protective composition can be applied to plants or seeds (col. 2, lines 52-56; col. 4, example 7). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Stroll by applying to pre-plant seeds as disclosed by Talbot et al. so as to control pests at an early stage so as to promote healthy plant growth.

As to claim 2, Stroll as modified by Talbot et al. further disclose coating the seeds (encompassed in “seed dressing” of col. 2 lines 52-56 of Talbot et al.).

As to claim 4, Stroll as modified by Talbot et al. further disclose spraying (first two paragraphs of “Methods of Use” section on page 2 of the printout).

As to claims 10-13, the limitations of Claim 1 are disclosed as described above. Not disclosed are method steps of drying the seeds in a chamber with a conveyor belt. Examiner takes official notice that it is old and notoriously well known in the agronomic art to dry the seeds in a chamber with a conveyor belt after a seed treatment. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Stroll as modified by Talbot et al. by drying the seeds in a chamber with a conveyor belt after the treatment as a efficient method of coating seed.

As to claim 15, Stroll as modified by Talbot et al. further disclose contacting during emergence (from Stroll in that plants can be foliarly treated at any time).

Response to Arguments

Applicant's arguments filed 30 September 2005 have been fully considered but they are not persuasive. Applicant's arguments are: (1) Stroll is an undocumented anecdotal internet reference that is directed to virus inhibition, not insecticidal activity, where use as a pre-emergent is not suggested (Remark 3); (2) Talbot et al. does not teach or suggest use of a compound with insecticidal activity (Remark 4); and, (3) no incentive to combine Stroll and Talbot et al. (Remark 5).

As to argument (1), Stroll is a proper prior art reference because it meets the "requirement" of MPEP 2128 in that it was accessible to those in the art. Applicant should not that "[a]n electronic publication, like any publication, may be relied upon for all that it would have reasonably suggested to one of ordinary skill in the art" (MPEP 2128). Here, the internet prior art gives a rendition of a book first published in 1986. A copy of the pertinent pages of the 200 edition of the same book is supplied in this office action. This copy is also good prior art.

Stroll discloses ants, aphids, etc. under "Target Organisms" and so does disclose use of capsicum against crop and agricultural pests. The disclosed use of a compound as a pre-emergent is supplied by Talbot et al.

As to argument (2), Talbot et al. is used as prior art for the teaching that agricultural compounds can be applied as either "seed dressings" or "sprays" at col. 2 lines 52-56). Examiner considers it obvious to one of ordinary skill in the agricultural arts to apply a chemically active, agricultural compound in a variety of ways, *inter alia*, seed dressing, foliar spray, wick application, soil drench, and in irrigation water, depending upon the need.

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As to argument (3), the combination of Stroll and Talbot et al. is proper because one of ordinary skill in the agricultural arts would look to the methods of, or means of, application of other chemically active, agricultural compounds.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stoll and Ivbijaro et al. disclose in the prior art various uses of pepper as an insecticide.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

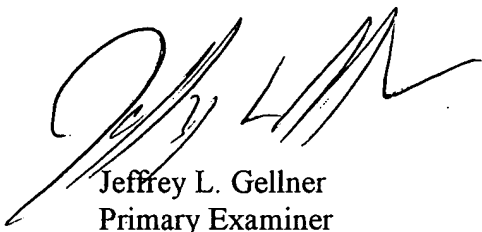
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter

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Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner
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